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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. BRUCE VICTOR LOMBARDI, Defendant and Appellant.	E046282 (Super.Ct.No. INF059096) OPINION

APPEAL from the Superior Court of Riverside County. John J. Ryan, Judge. (Retired Judge of the Orange County Superior Court, sitting under assignment by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const .) Affirmed.

Dabney B. Finch, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Gary W. Schons, Assistant Attorney General, Rhonda Cartwright-Ladendorf and Vincent P. LaPietra, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Bruce Victor Lombardi was convicted of attempted first degree

burglary (Pen. Code, §§ 664, 459[1]) following a jury trial, based on an incident in which he used a crowbar or pry bar[2] to try to open the door to an attached oversized garage. The owner of the residence rented the house to tenants, but kept the door connecting the living quarters to the garage locked, and retained exclusive use of the oversized garage/hangar to store aircraft or hot air balloon equipment. Defendant contends that because the tenants of the dwelling part of the structure lacked access to the garage, the attempted burglary should be second degree, commercial burglary. We affirm.

BACKGROUND

On June 27, 2007, a plumber working on a water main in Indio heard a clanking sound and looked up to see defendant standing in the middle of the street. He saw the defendant put an object resembling a crowbar into the waistband of his pants, and then pull his shirt over the object. The plumber then observed the defendant walk diagonally across the street toward a house at the end of the street. The plumber lost sight of defendant momentarily, but then observed defendant come back into view, walk around the left side of the house and through a gate in a chain link fence. The plumber called the police to report the suspicious behavior.

Within minutes, a sheriff's deputy who was on patrol at the time of the call arrived. The deputy saw the defendant on the side of the house near a gate that led to the

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[1] All further statutory references are to the Penal Code, unless otherwise indicated.

[2] The object was referred to as a crowbar or pry bar variously at trial. For consistency, we will refer to it is a crowbar.

back yard. The gate was open and the defendant was partially through it. The defendant shut the gate and went through to the backyard. The deputy yelled at the defendant to stop. Defendant looked at the deputy and ran toward the nearby Bermuda Dunes airport. Defendant then ran across the street and through the desert on the opposite side of the house. The deputy saw defendant reach into his waistband as he started running from the deputy.

Several minutes later, defendant was apprehended approximately a mile away. The deputy who detained defendant transported him back to the location where the report had been made, and saw numerous shoe impressions matching the shoes worn by defendant. A 17-inch crowbar was also found. This crowbar was identified by the plumber as the object defendant had put down his pants.

The premises where defendant had been seen by the plumber were inspected. At the rear of the residence, was an oversized garage or hangar that was attached to the residence. The oversized garage looked like any other garage but was big enough to fit a private plane. The owner stored his own belongings in the garage, including aircraft for his hot air balloon business. The garage had two doors: one leading from the hangar into the house, and one leading from the hangar out to the patio. From the outside, access to the garage could be made from a door on the east side of the structure, where pry marks and damage were found. Some damage was old, but some was fresh. The marks were consistent, in color and size, with the crowbar that was found.

Inside the garage, there was a door that led from the inside of the garage into the house. Although tenants were not allowed in the garage/hangar, a person with a crowbar could open the interior door and get into the house from the garage.

Defendant was charged with attempted first degree burglary. (§§ 664, 459, 460.) It was further alleged that he had previously been convicted of a serious felony (§ 667, subd. (a)), as well as a prior serious felony under the Three Strikes law (§ 667, subds. (b)-(i)), and that he had served a prison term for a prior conviction (prison prior). (§ 667.5, subd. (b).) He was tried by a jury and found guilty of attempted residential burglary as charged. In a separate court trial, the court found the allegations of the prior convictions were true, but dismissed the prison prior. Defendant was sentenced to an aggregate term of nine years in state prison. Defendant timely appealed.

DISCUSSION

Defendant contends the evidence was insufficient as a matter of law to establish the elements of attempted first degree burglary. Specifically, he asserts that the attempted entry of the attached oversized garage does not constitute entry of an inhabited dwelling. We disagree.

As relevant here, every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill barn, stable, outhouse or other building, among other structures, with the intent to commit theft or any felony, is guilty of burglary. (§ 459.) A burglary of an inhabited dwelling house or the inhabited portion of any building is burglary of the first degree. (§ 460.) Defendant contends that because the tenants were not permitted to enter the garage/hangar, the structure was not functionally

interconnected to the residence, making his crime an attempted commercial burglary. The legal sufficiency of undisputed evidence to support the verdict of first degree burglary is a question of law which we review de novo. (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 316, fn. 3; see also, *People v. Groat* (1993) 19 Cal.App.4th 1228, 1231.)

The term "inhabited dwelling house" has been given a broad, inclusive definition. (*People v. Singleton* (2007) 155 Cal.App.4th 1332, 1338.) Courts have construed the terms "residence" and "inhabited dwelling house" to have equivalent meanings. (*People v. Rodriguez* (2000) 77 Cal.App.4th 1101, 1107.) To determine whether a structure is part of an inhabited dwelling, the essential inquiry is whether the structure is functionally interconnected with and immediately contiguous to other portions of the house. (*Ibid.*) "Contiguous" means adjacent, adjoining, nearby or close. (*Ibid.*) "Functionally interconnected" means used in related or complementary ways. (*Ibid.*)

An attached garage may be an occupied building, especially where the garage can be reached through an inside door connecting it to the rest of the residence. (*People v. Cook* (1982) 135 Cal.App.3d 785, 788-790.) However, the presence of a connecting door is not the litmus test. A garage may be part of an inhabited dwelling even though the structure lacks an internal connecting door leading into the house, so long as the garage is under the same roof, functionally interconnected with, and immediately contiguous to other portions of the house. (*In re Edwardo V.* (1999) 70 Cal.App.4th 591, 593-594.)

It is the close physical proximity of an attached structure that increases the potential for confrontation and threatens the safety of residents, and this potential is not

mitigated when access to the garage is from outside rather than from inside the house. (*In re Edwardo V., supra*, 70 Cal.App.4th at p. 594.) Thus, even the absence of an inside door does not compel a designation of second degree burglary. (*People v. Ingram* (1995) 40 Cal.App.4th 1397, 1404, disapproved on other grounds in *People v. Dotson* (1997) 16 Cal.4th 547, 560, fn. 8.)

In this case, the garage was fully attached to, and under the same roof as the rest of the residence, and there was an inside door connecting it to the rest of the residence. Defendant therefore focuses on the term "functionally interconnected." He argues that the fact the tenants were excluded from using the garage by way of a deadbolt lock, and the fact the owner used it to store hot air balloon equipment related to his business indicate the oversized garage was not functionally related to the rest of the dwelling. However, there was no evidence the defendant was aware of the restriction. Further, there was evidence presented to the jury that access to the living quarters of the residence was possible by using the crowbar on the door that connected the garage to the living quarters.

In other words, the fact the tenants were contractually restricted against accessing the oversized garage through the living quarters did not mean the defendant was prevented from entering the residence through the locked connecting doorway. This potential for confrontation with the occupants of the living quarters distinguishes this case from that of *People v. Warwick* (1933) 135 Cal.App. 476, 478, where the building in which the tire store was located had a hotel on the top floor. In that case, the court held the nocturnal entry into the store was not a residential burglary. That case is

distinguishable because there is no indication that the defendant could have gained entrance to an occupied hotel room through the tire store.

In the present case, the jury was properly instructed that it needed to determine if the garage/hangar was "attached to the house and functionally connected with it," in order to find that the burglary was first degree burglary. Because the jury found that the burglary was residential in nature, it is deemed to have resolved the factual question of the garage's "functional connection" with the living quarters against the defendant. We cannot disturb this finding. (*People v. Westek* (1948) 31 Cal.2d 469, 472.)

DISPOSITION

The judgment is affirmed.

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s/Gaut
J.

We concur:

s/Richli
Acting P. J.

s/Miller
J.